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bill has the same time after notice to himself, for giving notice to other parties beyond him, that was allowed to the holder after the default. *Sheldon* vs. *Benham*, 4 Hill, N. Y. 129, 133; *Eagle Bank* vs. *Hathaway*, 5 Metcalf, 213. And when a bill is sent to an agent for collection, the agent is required simply to give notice of the dishonor in due time to his principal; and the principal then, has the same time for giving notice to the endorsers after such notice from his agent, as if he had been himself an endorser receiving notice from a holder. *Bank of the United States* vs. *Davis*, 2 Hill's N. Y. R. 452. *Church* vs. *Barlow*, 9 Pick. 547. The party in this case, therefore, was not at fault by sending the notice directly to the Bank of Salem, leaving that bank to send the notice to the plaintiffs in error.

Applying the rule, therefore, which we have adopted as the correct one, to this case, it was incumbent on the plaintiffs below, in order to be entitled to a recovery, to show that the notice of the dishonor of the bill, was deposited in the Post Office at Pittsburgh, in time to be sent by the mail of the 28th day of July. Ten minutes past nine o'clock in the morning, was not an unseasonably early hour, or before a reasonable and convenient time after the commencement of early business hours of the day. The neglect, therefore, to send the notice by the mail of the next day after the day of the default, operated to discharge the plaintiffs in errror as endorsers, unless from some other cause, notice had been dispensed with, or rendered unnecessary. And for the charge of the Court of Common Pleas to the jury to the contrary, the judgment is reversed, and the cause remanded for further proceedings.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

Supreme Court of Pennsylvania, Harrisburg, 1853.

Assignment to Creditors.—Where, in an assignment, some creditors are preferred, it will not be implied, as against other creditors, that the preference extends to interest accruing after the date of the assignment. *Daniel Man's Appeal.* LOWRIE J.

Death-Bed Gifts.—Where one on his death-bed expresses a wish to his heir at law, that certain persons, whom he names, shall receive of his estate specified articles and sums of money as gifts from him, and the heir promises him that his request shall be fulfilled, the necessary implication is, that the promise is to be performed after the death of the promisee, and that the consideration is that the promissor shall succeed to his estate under the intestate laws. The law implies the consideration from these facts, and the consideration failing by disinheritance or otherwise, the heir would be released. *Parker* v. *Urie's Executors.* LEWIS J.

Executors.—An executor cannot take a credit in his account for a debt due to himself from the decedent, which was barred by the statute of limitations, in the life-time of the testator. There having been no evidence submitted to the auditor to whom the account was referred, which would have authorized a recovery at law, it was his duty to have rejected the credit. *Hoch's Appeals.*

Evidence.—Evidence in support of the general character of witnesses is not competent until their general character has been assailed. Every witness puts his character in issue, but until evidence tending directly to its impeachment is produced, the law presumes it to be good, and therefore testimony to prove it so is superfluous and irrelevant. *Peter Wertz* v. *Daniel May.* WOODWARD J.

Execution.—Liability to distress, is the criterion for determining the landlord's right to participate in the proceeds of a Sheriff's sale of goods on execution. Where a creditor, whose debt was contracted after 4th July, 1849, seized his debtor's goods in execution, and on a claim of the benefits of the exemption law, the appraisement amounted to less than $300, and thereupon the Sheriff restored the goods to the debtor and returned his execution, after which another creditor, whose judgment was founded on a debt contracted before the 4th July, 1849, levied on the same goods and sold them, and the money was brought into Court by the Sheriff, on a notice from a landlord of the debtor, whose rent accrued subsequent to 4th July, 1849. *Held,* that the landlord had no right of distress in respect to the goods, and therefore no footing in Court on a question of distribution of proceeds. *Paltiall S. Rowland* v. *John Goldsmith.* WOODWARD J.

Equity.—Interrogatories, though not indispensible to a bill in equity, become a material part of it, when founded on matter contained in the

charging part of the will, and such interrogatories the defendant is compelled to answer. Facts alleged in answer, not responsive to plaintiff's interrogatories, but in evidence of his will, must be proved by the defendant; but if they be responsive, the plaintiff must overcome the two witnesses, or equivalent evidence. The operation of the defendant's answer is the same, though the equity of the plaintiff's will is grounded on an allegation of fraud. By WOODWARD J., in *Wenge's Executors* v. *Groff & Groff*. LEWIS J. dissenting.

Executor — Compensation — Accounts.—Where an executor or other trustee settles his accounts in Court with undue frequency, the remedy is in the Court to impose the costs on him. *Spangler's Appeal.* LOWRIE J.

Where one-third of the residue of an estate is bequeathed to be invested by the executors, who are to pay the interest to the widow during life, the executors are entitled to compensation out of the income, for their services in administering the fund. *Ibid.*

All kinds of trustees are entitled to a reasonable compensation for their services as they are rendered, and, unless a contrary intention appears, the compensation must come out of the income of the fund with which they are entrusted. *Solliday* v. *Bissett*, 12 Penn. St. R. 347, on this point commented on. *Ibid.*

Fraud—Practice.—If a creditor, knowing that his debtor is in failing circumstances, takes from him, for part of his claim, a mortgage substantially covering all his property, and gets the debtor to obtain the endorsement of another person for another part, without revealing the fact of the mortgage, this is fraud upon the endorser, and discharges him from liability. *Lancaster County Bank* vs. *Albright.* LOWRIE J.

Where persons, assuming to act for another in securing a claim, are guilty of fraud in the transaction, the creditor must go back to his old position if he would repudiate the fraud of the new arrangement. *Ibid.*

A general prayer for a charge that there is no evidence of a particular fact is not good practice. A better way is to call on the opposite counsel to indicate in writing the evidence relied on, and the Court may, in a proper case, enforce the demand; and then the question will be one of shape and body on which a well refined instruction can be given. *Ibid.*

A prayer for the Court to charge the jury that there is evidence, from which a particular fact may be inferred, ought to point out the special facts which justify the inference. *Ibid.*

Husband and Wife—Partition—Act of 1848.—Where land is held in common by a married woman and others, and they all join in a partition, and her share is conveyed to her and her husband, the law considers the share as still her's, a divided share being substituted for an undivided one. *Stehman* v. *Huber*. LOWRIE J.

If the husband has paid money for *owelty* of partition of the wife's land, and the conveyance be made to him and his wife, he acquires an interest in common with her, in proportion to the amount paid. *Ibid.*

When the husband conveys, in fraud of creditors, his life estate in land held in right of his wife, the creditors may levy on the growing crops as his property. *Ibid.*

The married woman act of 1848, was not intended to take away the vested rights of the husband, and does not allow him to give them away in fraud of his creditors, even to his wife. *Ibid.*

Intestates.—W. E. died leaving a widow and three daughters. J. E., his brother, married the widow and had by her a daughter Elizabeth, and died intestate, seized of real estate which he had purchased. After this, Elizabeth died intestate, and unmarried. *Held*, that the widow, though capable of being the heir of Elizabeth, could not take the fee in the land because she was not of the blood of her husband, from whom the estate descended to Elizabeth, and that the 6th section of the statute of descents of 8th April, 1833, admitted the half sisters to the inheritance, in preference to more remote kindred of the whole blood. Any, the smallest quantity of common blood with the ancestor from whom the estate descended, is sufficient to qualify heirs to take, and in nieces there is no lack of inheritance blood. *Mary Emes and others* v. *Phillip Brown*. WOODWARD J.

Infants.—The right to command the services and recover the wages of a minor son, being in the father, when he makes a contract for them, there is no ground for presuming that he is acting as agent for his son; or that the other person knows it, and therefore the law does not presume it. *Kauffelt* v. *Moderwell*, LOWRIE J.

The right of action for the wages, in such case, is in the father. *Ibid.*

Judgment.—Where a judgment is given for a sum certain, but really to cover liabilities incurred and advances to be made, if record notice of the amount actually due, before the intervening rights of lien, creditors have attached such judgment, has priority of lien, to the extent of the advances actually made or liabilities incurred. *Kunnybacher* v. *Charles*. KNOX J.

Landlord and Tenant.—Where the owner in fee of lands encumbered by a mortgage, entered into an article of agreement by which another was to occupy the lands for life, for which the occupant was to pay the annual interest to the mortgagee, and also to pay quarterly to the owner, the interest on all sums which he had or should thereafter pay on the purchase of the land. It was held that the occupant was the tenant of the owner, and that payment of the interest might be enforced by distress. *Raed* v. *Kitchen.* KNOX J.

Lands—Evidence.—A mark on the land, intended as a measure of the height of a dam, is not such a boundary mark as can be proved by reputation, so as to effect the rights of owners of land affected by the dam. *Schuylkill Navigation Company* v. *Robeson.* LOWRIE J.

Lunatics.—The 45th section of the act of 13th June, 1836, relating to lunatics or habitual drunkards, authorizes the service of writs against lunatics on committees, but before the writ issues, there should be a suggestion of record of the inquisition of lunacy and of the name of the Committee. A writ against a lunatic, without such suggestion, and served on a man whom the Sheriff, in his return, called trustee, is simply a writ against one, and service on another, which justifies a judgment against neither. *Laird* v. *Huling.* WOODWARD J.

Mechanics' Lien.—Where the structure of a building is so completely changed, that, in common parlance, it may be properly called a new building, or a re-building, it comes within the Mechanics' Lien Law. *Armstrong* vs. *Ware.* LOWRIE, J.

Where every part of an old building is removed, except the back wall and part of the side walls, and in them the openings are changed; altering the whole internal structure and external form of the building, and adding both to its height and length; such a building is the subject of a Mechanics' Lien. *Ibid.*

Nuncupative Will—Legacy—Witness.—Though a legatee may release or renounce a legacy, and thus become a competent witness to prove a will, yet he cannot make himself competent by assigning his interest to another. The contrary doctrine, in Search's appeal, 13 State R. 108, overruled. *Haus* v. *Palmer.* LOWRIE J.

The appearance of two disinterested persons as witnesses, at the making of a nuncupative will, is necessary to its validity. *Ibid.*

It is necessary to the validity of a nuncupative will, that each of its

requisites be very clearly proved by two witnesses, to wit: its substance, the intent to will, the *rogatio testium*, and the necessity that prevents its being reduced to writing. *Ibid.*

The general rule requiring all wills to be in writing, is intended to be as nearly universal as possible, and the exception in favor of nuncupative wills must be very strictly administered, and confined to cases of necessity. Ignorance of the general rule, or carelessness about attending to it when the testator is conscious that his sickness is unto death, or mere aversion to be troubled about it, does not constitute such necessity. *Ibid.*

On an issue to try the validity of a nuncupative will, the declaration ought to contain the substance of the will offered to be proved, or it ought to appear somewhere as part of the record. *Ibid.*

Orphans Court.—An administrator who settles his account before auditors in the Orphans' Court, and suffers a final decree of distribution to pass, without alleging payments made to one of the distributees, (which he denies), cannot, a year afterwards, come in by means of a bill of review, and make the alleged payments ground of fresh litigation or more delay. *Hildebeitle's Appeal.* WOODWARD J.

Partnership—Assignment.—Three successive partnerships existed; the first composed of five brothers, the second of three, and the last of two; the two last firms having bought out, respectively, the interests of the retiring partners. At the purchase made by the second firm, they agreed with the two retiring partners to pay the partnership debts of the second firm. At the purchase made by the second firm, there was no evidence of any such agreement with the retiring partners, respecting the creditors of the two preceding firms. The last firm made an assignment of the assets, in trust for its own partnership debts. *Held*, that the creditors of the first and second firm had no lien on the property; by the sales of the retiring partners, it became vested in the last firm, and might be disposed of for the payment of all its debts, without preferences. Such assignment, although the creditors of the two first firms, as well as individual creditors, were excluded, is not forbidden by the act of 1843. *Yearsley's Estate.* LEWIS J.

The preference which partnership creditors have in the distribution of partnership assets, is founded on no equity of their own, but on the equity of the partners themselves, and must be worked out through them. Where they make a different disposition of the property, in good faith, the preference is at an end. *Ibid.*

An agreement by the second firm, in consideration of the sale of the interest of the two retiring partners, to pay all the debts of the first firm, created no lien on the property, and the subsequent transfer of it to the last firm, without any such agreement respecting the debts of the two preceding firms, took away all pretence for saying that the partnership creditors of the two first became, by transfer, creditors of the last. *Ibid.*

The distribution of the assets among the creditors of the last firm was correct. *Ibid.*

Partnership.—Where the plaintiff alleged a leasing of a lot from a firm, and the defendant was permitted to give evidence of plaintiff's declarations, tending to show that the leasing was from one member of the firm, as his separate property, it was competent for the plaintiff to prove, in rebutting, that the lot belonged to the firm, and not to the partner. *Moderwell* v. *Mullison.* WOODWARD J.

And if the lot were partnership property, and used as such, the lease, though made by one partner in his own name, would enure to the benefit of the firm. *Ibid.*

When real estate is brought into the partnership business, it is treated in equity as personal estate, and a lease of it by one partner, is as much a partnership transaction as a sale of partnership goods by him would be. *Ibid.*

Statute of Frauds—Evidence.—In an action of ejectment, to enforce a final contract for the sale of lands, it is the duty of the Court to hold the plaintiff to strict proof; and mere instructions to the jury as to what is required, is not the limit of the authority of the Judge presiding at the trial. He must see to it that the correct result is produced. *Wetherill* v. *Wetherill.* KNOX J.

The declarations or admissions of a grantor made to a stranger, may be received as corroborative evidence, but standing alone, are not sufficient to establish a contract for the sale or gift of lands. *Ibid.*

Sheriff.—A Sheriff is not liable for interest on money collected by him on execution, until after demanded, and a rule on him to pay the money into Court, where there is a dispute among the execution creditors, cannot be regarded as equivalent to a demand, even though he does not account for the disposition of the money in the meantime. *Hantz* v. *Commonwealth.* LOWRIE J.

A Sheriff is not bound to take notice of a rule not served on him. *Ibid.*

Obedience to such a rule is to be enforced by attachment, and not by an action claiming interest for his disobedience. *Ibid.*

Taxes—Foreign Law—Domicil.—The general principle that personal property is to be taxed according to the law of the owners domicil; and real estate according to the place where it is situated, has been somewhat changed by statute; but no alteration has been made which authorizes the collection of collateral inheritance tax where neither the property to be taxed nor the domicil of the owner was within the State at the time of his death. *Commonwealth* vs. *Stewart's Ex'r.*—LEWIS, J.

Where the testator was domiciled in Cuba at the time of his death, the "universal heir" constituted, according to civil law, is under no necessity to apply to our laws for aid in obtaining possession of that part of the estate which is situated in that Island; and the legatees may enforce their claims against him there according to the laws of Spain. In such case, legacies, "payable out of the crops of a sugar plantation" there, are not subject to the collateral inheritance tax here. *Ibid.*

The domicil *of origin* continues until it is changed by acquiring one elsewhere; but where a man removes to a foreign country, settles himself there, and engages in the trade of the country, the presumption in favor of the continuance of the domicil of origin ceases, and the burthen of disproving the domicil *of choice* is lost upon him who denies it. *Ibid.*

Neither investments nor commercial enterprises in, nor occasional visits on business or pleasure to his native country, will in such case work a change of domicil. Nor will a desire to be buried there, and the execution of that wish by his executor, have that effect. *Ibid.*

By the civil law, strangers can make no disposition of their property in view of death; and where a man professes the Roman Catholic religion, and receives letters of naturalization in a country whose laws require both as a condition upon which the privilege of testamentary disposition is granted, these solemn professions of religious faith and political allegiance are too decisive to be repelled by slight evidence. *Ibid.*

Even if these professions were falsely made for the purpose of evading the laws of the foreign government, it is contrary to that elevated rule of morality which regulates the conduct of civilized nations, for this commonwealth to claim advantage from a fraud thus perpetrated by one of her own citizens upon a friendly nation. *Ibid.*

The acquisitions in Cuba, and the right to dispose of them by will having been gained by these professions, so far as regards that part of the estate, the commonwealth and all others who claim advantage from it, are bound by them. *Ibid.*

Trust—Parol Evidence.—Oral evidence that at the time of a conveyance, the vendee agreed to hold the title in trust for the vendor, is inadmissible as a contradiction of a written instrument. Therefore, where a man conveys land to another by deed, and afterwards enters into an agreement with with his vendee, by which he is to reside on the land and farm it for the vendee, and does so for several years, apparently under such agreement, he will not be allowed to defend his possession against his vendee, by oral testimony that his conveyance was made in trust for himself. *Porter* v. *Mayfield.* LOWRIE J.

Will—Legacy.—Where a testator devised the residue of his estate to his grand-children equally, *per capita*, describing them as follows, viz.: "The children of my deceased daughter Sarah; the *child* of my deceased daughter Catharine," &c., &c. Catharine had two children living at the death of the testator, and at the date of the will. *Held* that both were entitled to take as residuary legatees. *Urie's Executors* v. *Jenin and wife.* KNOX J.

Wills.—A testator, by his last will, ordered his executors to sell his real estate, and, after payment of debts and legacies, to pay the residue to his "eight children," but, "*if any of my children above named should die before receiving their share, without leaving lawful issue, then said share to be equally divided among the survivors.*" The executor settled his administration account in the Orphans' Court, ascertaining the distributive share of each child, and on the 3d September, 1851, the Court decreed distribution of the fund in his hands, "according to the will." In January following, Elizabeth, one of the children, died, having first made a will, devising her whole estate. The executor of the father's will paid over her distributive share to her executor, and then instituted this action to recover it back. *Held*, that from the time of the decree of the Orphans' Court, the distributive share of Elizabeth was fully vested in her as her absolute property; that the executor held it in trust for her, and that his reception and possession of it enured to her benefit, and, under the circumstances, amounted to a *receiving* of it by her, within the meaning of her father's will, and consequently that it passed by her will, and the payment made by the father's executor to her's was properly made, and could not be recovered back. *John Cessna, Executor,* v. *S. L. Rupel, Executor.* WOODWARD J.